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COMMERCE COMMISSION
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New Millennium Telecommunications, Inc.)

CHIEF CLERK'S OFFICE

vs.)

Docket No. 01-0560

MCI WorldCom Communications, Inc.)

Verified Complaint Pursuant to Sections
13-514, 13-515, 13-516 and 13-902 of
the Illinois Public Utilities Act)

VERIFIED ANSWER AND AFFIRMATIVE
DEFENSES OF MCIMETRO ACCESS TRANSMISSION SERVICES, INC.

Respondent MCImetro Access Transmission Services, Inc. (incorrectly complained of as MCI WorldCom Communications, Inc.) (hereafter referred to as "MCI"), by and through its attorney, for its answer to the complaint of New Millennium Telecommunications, Inc. ("NMT") in the above-captioned matter, states as follows:

VERIFIED COMPLAINT

NEW MILLENIUM TELECOMMUNICATIONS, INC. ("NMT"), a telecommunications carrier, complains of MCI/WorldCom ("MCI"), a telecommunications carrier, pursuant, but not limited to Sections 13-514, 13-515, 13-516, 13-902 of the Public Utilities Act ("Act"), 220 ILCS 5/514, 5/13-515, 5/13-516, 5/13-902 and Section 200.170 of the Commission's Rules of Practice, 83 Ill. Admn. Code section 200.170 ("Code") the following:

Answer: MCI admits that New Millenium Telecommunications, Inc. is a telecommunications carrier and that MCI is a telecommunications carrier. MCI lacks knowledge or information sufficient to form a belief as to whether New Millenium Telecommunications, Inc. is an Illinois corporation. A search of the website of the Illinois Secretary of State on August 23, 2001 (http://www.sos.state.il.us/cgi-bin/business_services/corpsrch.s) showed no entity named New

Millenium Telecommunications, Inc. as a corporation or partnership registered to do business in the State of Illinois. The remainder of allegations in the foregoing paragraph represent NMT's characterization of its action, to which no answer is required. However, insofar as an answer to those allegations may be deemed required, MCI admits that NMT purports to bring this action pursuant to Sections 13-514, 13-515, 13-516 and 13-902 of the Illinois Public Utilities Act ("IPUA"), and Section 200.170 of the Commission's Rules, but denies that NMT has stated a claim against MCI or that NMT is entitled to any relief whatsoever.

I.

STATEMENT OF THE CASE

1. NMT alleges that MCI, a telecommunications carrier as defined by the Act, has impeded the development of competition by continuing to switch NMT's residential customers, without the residential customers' knowledge or authorization, to MCI's local service. NMT informed MCI of this illegal practice. Nevertheless, MCI continues to switch NMT's residential customers, without the residential customers' knowledge or authorization, to its local service. Such practice, as more fully set forth herein, violates the Act in that MCI has unreasonably impaired the quality and efficiency of services provided by NMT and has unreasonably acted in a manner that has a substantial adverse effect on the ability of NMT to provide service to its customers. MCI has also violated the Act in that MCI failed to obtain separate authorization from NMT's customers for each of its services. Therefore, NMT seeks, by this action, emergency relief, damages, attorney's fees, costs and penalties, as more fully set forth herein.

Answer: MCI admits that it is a telecommunications carrier as defined by the IPUA.

MCI denies that it has impeded the development of competition by switching NMT's residential customers without their knowledge or authorization to MCI's local service. MCI lacks knowledge or information sufficient to form a belief as to whether NMT ever informed MCI of this allegation prior to receipt of the instant complaint because, *inter alia*, the complaint fails to identify the customer or customers whose service was allegedly switched to MCI local service without her knowledge and authorization. MCI denies that it continues to switch NMT's

residential customers to MCI local service without their knowledge or authorization. MCI denies that that it has unreasonably impaired the quality and efficiency of services provided by NMT and further denies that it has violated the IPUA, or that it has unreasonably acted in a manner that has a substantial adverse effect on the ability of NMT to provide service to its customers. MCI denies that it failed to obtain separate authorization from NMT's customers for each of its services. The remainder of the allegations in the paragraph 1 represent NMT's characterization of the remedies it seeks, to which no answer is required. However, insofar as an answer to those allegations may be deemed required, MCI admits that NMT is seeking certain remedies, but denies that NMT is entitled to the remedies it seeks.

II.

PARTIES

2. MCI is doing business in the State of Illinois, and is a telecommunications carrier as defined in Section 13-202 of the Act. 220 ILCS 5/13-202.

Answer: MCI admits that it does business in the State of Illinois and admits that it is a telecommunications carrier as defined by Section 13-202 of the IPUA.

3. NMT is a corporation organized under the laws of the State of Illinois, and is a telecommunications carrier as defined in Section 13-202 of the Act. 220 ILCS 5/13-202.

Answer: MCI lacks knowledge or information sufficient to form a belief as to whether New Millenium Telecommunications, Inc. is a corporation organized under the laws of Illinois. A search of the website of the Illinois Secretary of State on August 23, 2001 (http://www.sos.state.il.us/cgi-bin/business_services/corpsrch.s) showed no entity named New Millenium Telecommunications, Inc. as being registered to do business in the State of Illinois. MCI admits that New Millenium Telecommunications, Inc. is a telecommunications carrier as defined by Section 13-202 of the IPUA.

III.

AUTHORITY

4. NMT is a telecommunication carrier within the State of Illinois that has the license and right to engage in providing telecommunications services to end users, including residential end users. 220 ILCS 5/13-202, 5/13-217, 5/13-219.

Answer: MCI admits that NMT is a telecommunications carrier as defined by Section 13-202 of the PUA. MCI lacks knowledge or information sufficient to form a belief as to whether NMT retains the right to engage in providing telecommunications services to end users, including residential end users, because it is unclear whether NMT is an Illinois corporation in good standing or a foreign corporation in good standing registered to do business in Illinois. A search of the website of the Illinois Secretary of State on August 23, 2001

(http://www.sos.state.il.us/cgi-bin/business_services/corpsrch.s) showed no entity named New Millenium Telecommunications, Inc. as being registered to do business in the State of Illinois.

5. MCI is a telecommunications carrier doing business within the State of Illinois and is engaged in providing telecommunications services to end users, including residential end users. 220 ILCS 5/13-202, 5/13-217, 5/13-219.

Answer: MCI admits that it is a telecommunications carrier doing business within the State of Illinois and is engaged in providing telecommunications services to end users, including residential end users.

6. Section 13-515(d) of the Public Utilities Act provides, in relevant part, as follows:

A telecommunications carrier may file a complaint with the Commission alleging a violation of Section 13-514 in accordance with this subsection...
220 ILCS 5/13-515(d).

Answer: MCI admits that paragraph 6 correctly quotes a portion of Section 13-515(d) of the IPUA, but denies that it quotes Section 13-515(d) in its entirety, and further denies that MCI has violated the IPUA.

7. Section 13-902(g) of the Public Utilities Act provides, in relevant part, as follows:

Complaints may be filed with the Commission under this Section by a subscriber whose telecommunications services has been provided by an unauthorized telecommunications carrier as a result of an unreasonable delay, by a subscriber whose telecommunications carrier has been changed to another telecommunications carrier in a manner not in compliance with this Section, by a subscriber's authorized telecommunications carrier that has been removed as a subscriber's telecommunications carrier in a manner not in compliance with this Section, by a subscriber's authorized submitting carrier whose change order was delayed unreasonably, or by the Commission on its own motion. 220 ILCS 5/13-902(g).

MCI is subject to various laws and regulations that require it, inter alia, to provide telecommunication services in a manner that: 1) does not impede the development of competition in any telecommunications service market; 2) does not have a substantial adverse effect on the ability of another telecommunications carrier to provide service to its customers; 3) does not unreasonably impair the quality or efficiency of services used by another telecommunications carrier; and 4) obtains proper authorization and verification of its subscribers.

Answer: MCI admits that paragraph 7 correctly quotes a portion of Section 13-902(g) of the IPUA, but denies that it quotes Section 13-902(g) in its entirety, and further denies that MCI has violated the IPUA. MCI admits that it must comply with the provisions of the IPUA that apply to telecommunications carriers providing competitive services. MCI states that the remaining allegations of Paragraph 7 seek to characterize obligations imposed by the IPUA, denies that the characterization is complete and accurate, and respectfully refers the ALJ and the Commission to the IPUA for its provisions. To the extent any further answer is required, MCI denies each of the remaining allegations of Paragraph 7.

IV.

APPLICABLE LAWS AND REGULATIONS

8. Section 13-514 of the Act, 220 ILCS 5/13-514, provides in relevant part, that:

A telecommunications carrier shall not knowingly impede the development of competition in any telecommunications service market. The following prohibited actions are considered per se impediments to the development of competition; however, the Commission is not limited in any manner to these enumerated impediments and may consider other actions which impede competition to be prohibited:

- ...
(2) unreasonably impairing the speed, quality, or efficiency of services used by another telecommunications carrier;
- ...
(6) unreasonably acting or failing to act in a manner that has a substantial adverse effect on the ability of another telecommunications carrier to provide service to its customers;

Answer: MCI admits that paragraph 8 correctly quotes portions of Section 13-514 of the IPUA, but denies that it quotes Section 13-514 in its entirety, and further denies that MCI has violated the IPUA..

9. Section 13-515 of the Act, 220 ILCS 5/13-515, provides in relevant part, that:

- (a) The following expedited procedures shall be used to enforce the provisions of Section 13-514 of this Act except as provided in subsection (b). However, the Commission, the complainant, and the respondent may mutually agree to adjust the procedures established in this Section...

- ...
(c) No complaint may be filed under this Section until the complainant has first notified the respondent of the alleged violation and offered the respondent 48 hours to correct the situation. Provision of notice and the opportunity to correct the situation creates a rebuttable presumption of knowledge under Section 13-514. After the filing of a complaint under this Section, the parties may agree to follow the mediation process under Section 10.101.1 of this Act. The time periods specified in subdivision (d)(7) of this Section shall be tolled during the time spent in mediation under Section

10.101.1.

- (d) A telecommunications carrier may file a complaint with the Commission alleging a violation of Section 13-514 in accordance with this subsection.
- (e) If the alleged violation has a substantial adverse effect on the ability of the complainant to provide service to customers, the complainant may include in its complaint a request for an order for emergency relief. The Commission, acting through its designated hearing examiner or arbitrator, shall act upon such a request within 2 business days of the filing of the complaint. An order for emergency relief may be granted, without an evidentiary hearing, upon a verified factual showing that the party seeking relief will likely succeed on the merits, that the party will suffer irreparable harm in its ability to serve customers if emergency relief is not granted, and that the order is in the public interest...

Answer: MCI denies that that paragraph 9 correctly quotes Section 13-515(a) of the IPUA. The quoted text includes a reference to subsection (b) of Section 13-515 of the IPUA, which no longer exists. MCI admits that paragraph 9 correctly quotes Section 13-515(c) of the IPUA. MCI admits that paragraph 9 correctly quotes a portion of Section 13-515(d) of the IPUA, but denies that it quotes Section 13-515(d) in its entirety, and further denies that MCI has violated the IPUA. MCI admits that paragraph 9 correctly quotes Section 13-515(e) of the IPUA. MCI further denies that it has violated the IPUA.

10. Section 13-516 of the Act, 220 ILCS 5/13-516, provides in relevant part, that:

- (a) In addition to any other provision of this Act, all of the following remedies may be applied for violations of Section 13-514:
 - (1) A Commission order directing the violating telecommunications carrier to cease and desist from violating the Act or Commission order or rule.
 - (2) The Commission shall award damages, attorney's fees, and costs to any telecommunications carrier that was subjected to a violation of Section 13-514.

Answer: MCI admits that paragraph 10 correctly quotes Section 13-516(a)(1) of the IPUA. MCI denies that paragraph 10 correctly quotes Section 13-516(a)(2) of the IPUA. The language quoted and attributed by paragraph 10 to Section 13-516(a)(2) appears in Section 13-516(a)(3). MCI further denies that it has violated the IPUA.

11. Section 13-902(c) of the Act, 220 ILCS 5/13-902(c), provides in relevant part, that:

(c) Authorization and verification of orders for telecommunications service.

- (1) No telecommunications carrier shall submit or execute a change on behalf of a subscriber in the subscriber's selection of a provider of telecommunications service except in accordance with the procedures prescribed in this subsection.
- (2) No submitting carrier shall submit a change on behalf of a subscriber in the subscriber's selection of a provider of telecommunications service prior to obtaining:
 - (A) authorization from the subscriber; and
 - (B) verification of that authorization in accordance with the procedure prescribed in this Section.
- ...
- (5) Where a telecommunications carrier is selling more than one type of telecommunications service (e.g., Sect local exchange, intraLATA/intrastate toll, and international toll), that carrier must obtain separate authorization from the subscriber for each service sold, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in this Section.

Answer: MCI admits that paragraph 11 correctly quotes Sections 13-902(c)(1) 13-902(c)(2), 13-902(c)(2)(A) and 13-902(c)(2)(B) of the IPUA. MCI denies that paragraph 11 correctly quotes Section 13-902(c)(5). That quote contains the typo "Sect" and omits the term

“interLATA/interstate toll” from the parenthetical examples of services for which authorization must be obtained. MCI further denies that it has violated the IPUA.

12. Section 13-902(g) of the Act, 220 ILCS 5/13-902(g), provides in relevant part that:

(g) Complaints may be filed with the Commission under this Section by a subscriber whose telecommunications service has been provided by an unauthorized telecommunications carrier as a result of an unreasonable delay, by a subscriber whose telecommunications carrier has been changed to another telecommunications carrier in a manner not in compliance with this Section, by a subscriber's authorized telecommunications carrier that has been removed as a subscriber's telecommunications carrier in a manner not in compliance with this Section, by a subscriber's authorized submitting carrier whose change order was delayed unreasonably, or by the Commission on its own motion. Upon filing of the complaint, the parties may mutually agree to submit the complaint to the Commission's established mediation process. Remedies in the mediation process may include, but shall not be limited to, the remedies set forth in this subsection. In its discretion, the Commission may deny the availability of the mediation process and submit the complaint to hearings. If the complaint is not submitted to mediation or if no agreement is reached during mediation process, hearings shall be held on the complaint. If, after notice and hearing, the Commission finds that a telecommunications carrier has violated this Section or a rule promulgated under this Section, the Commission may in its discretion do any one or more of the following:

...

- 3) Require the violating telecommunications carrier to pay to the subscriber's authorized telecommunications the amount the authorized carrier would have collected for the telecommunications service. The Commission is authorized to reduce this payment by any amount already paid by the violating telecommunications carrier to the subscriber's authorized telecommunications carrier for those telecommunications services.
- 4) Require the violating telecommunications carrier to pay a fine up to \$1,000 into the Public Utility Fund for each repeated and intentional violation of this Section.
- 5) Issue a cease and desist order.
- 6) For a pattern of violation of this Section or for intentionally violating a cease and desist order, revoke the violating telecommunications carrier's certificate of service authority....

Answer: MCI admits that paragraph 12 correctly quotes a portion of Section 13-902(g) of the IPUA, but denies that it quotes Section 13-902(g) in its entirety, and further denies that MCI has violated the IPUA. MCI denies that paragraph 11 correctly quotes Section 13-902(g)(3). That quote omits the term word “carrier” from the first sentence of that subsection. MCI admits that paragraph 12 correctly quotes Section 13-902(g)(4), Section 13-902(g)(5) and Section 13-902(g)(6) of the IPUA. MCI further denies that it has violated the IPUA.

IV.

STATEMENT OF FACTS

12. On or about May 13, 2001, NMT received a call from one of its residential customers complaining that her local service had been switched to MCI without her knowledge or authorization.

Answer: MCI lacks sufficient knowledge or information to form a belief as to the veracity of the allegations contained in this second numbered paragraph 12 and therefore denies the same.

13. On the same day, Will Watkins, Chief Financial Officer of NMT, spoke to the customer and she informed him that her service had been switched to MCI without her knowledge or authorization.

Answer: MCI lacks sufficient knowledge or information to form a belief as to the veracity of the allegations contained in paragraph 13 and therefore denies the same.

14. Mr. Watkins performed an inquiry that verified that MCI was providing her local service. Mr. Watkins informed the customer that NMT has no knowledge, prior to her call, that her local service was switched to MCI. Next, Mr. Watkins, with the customer on the phone, called MCI's customer service number and asked to speak to the manager.

Answer: MCI lacks sufficient knowledge or information to form a belief as to the veracity of the allegations contained in paragraph 14 and therefore denies the same.

15. When the manager came to the phone, Mr. Watkins, along with the customer, informed the manager that the customer had been switched without her knowledge or authorization. Mr. Watkins also asked what type of third party verification does MCI perform. The manager stated MCI does not do third party verification and had no record of the customer's request to be switched.

Answer: MCI lacks sufficient knowledge or information to form a belief as to the veracity of the allegations contained in paragraph 15 and therefore denies the same.

16. Mr. Watkins then informed the manager that switching a customer without his knowledge or authorization is illegal. He also requested MCI to cease and desist such practice. Finally, he told the manager that his practice violates the rights of the customer and jeopardizes the business of NMT.

Answer: MCI lacks sufficient knowledge or information to form a belief as to the veracity of the allegations contained in paragraph 16 and therefore denies the same.

17. Since May 13, 2001, NMT has received more complaints about MCI's practice of switching NMT's customers to MCI's local service without authorization.

Answer: MCI lacks sufficient knowledge or information to form a belief as to the veracity of the allegations contained in paragraph 17 and therefore denies the same.

18. As of the date of this complaint and to the best of NMT's knowledge, MCI continues to switch NMT's residential customers to MCI's local service without the customer's authorization or verification.

Answer: MCI lacks sufficient knowledge or information to form a belief as to the veracity of the allegations contained in paragraph 18 and therefore denies the same.

COUNT 1

VERIFICATION OF SECTION 13-514

1-19. NMT realleges and reincorporates paragraphs 1 through 19 of this Complaint as paragraphs 1 through 19 of this Count I, as though fully alleged herein.

Answer: The foregoing paragraph reincorporates allegations contained in paragraphs 1 through 19. MCI's answers to each of those paragraphs is reincorporated into this answer.

20. By MCI's continuing practice of switching NMT's residential customer, without their knowledge or authorization, to MCI's local service, MCI violated Section 13-514 of the Act in that: 1) MCI is knowingly impeding the development of competition in the telecommunications service market; 2) unreasonably impairing the quality and efficiency of services of NMT; 3) unreasonably acting in a manner that has a substantial effect on the ability of NMT to provide service to its customers.

Answer: MCI denies each of the allegations in paragraph 20.

21. NMT is suffering irreparable harm in its ability to serve its customers.

Answer: MCI denies the allegation contained in paragraph 21.

22. Emergency relief is necessary.

Answer: MCI denies the allegation in paragraph 22. The Commission denied emergency relief on August 23, 2001.

WHEREFORE, NMT prays this Commission find that Respondent has violated the Act as alleged herein, and enter an **EMERGENCY ORDER**:

- A. Finding that MCI has violated section 13-514 of the Act.

Answer: MCI denies that it has violated Section 13-514 of the IPUA.

- B. Requiring that MCI cease and desist its practice of switching NMT's customers to MCI's local service without the customer's knowledge or authorization.

Answer: MCI denies that it switches NMT's customers to MCI's local service without the customers knowledge or authorization.

- C. Grant NMT damages in the amount of \$500,000.

Answer: MCI denies that NMT is entitled to any damages.

B. Grant NMT all its attorney fees and costs.

Answer: MCI denies that NMT is entitled to any attorneys fees or costs.

C. Impose any penalties the Commission deems appropriate.

Answer: MCI denies that that any penalties can or should be levied against it.

D. Grant any other relief herein as will promote the development of competition in the telecommunications service market, or that justice and equity may otherwise require.

Answer: MCI denies that any relief should be granted.

COUNT II

VIOLATION OF SECTION 13-902

1-19. NMT realleges and in reincorporates paragraphs 1 through 19 of this Complaint as paragraphs 1 through 19 of this Count I, as though fully alleged herein.

Answer: The foregoing paragraph reincorporates allegations contained in paragraphs 1 through 19. MCI's answers to each of those paragraphs is reincorporated into this answer.

20. By MCI's continuing practice of switching NMT's customers, without their knowledge or authorization, to MCI's local service, MCI violated section 13-902 of the Act, in that MCI failed to obtain separate authorization from the subscriber for each service sold.

Answer: MCI denies each of the allegations contained in paragraph 20.

WHEREFORE, NMT prays this Commission find that Respondent has violated the Act as alleged herein, and enter an order:

A. Finding that MCI has switched customers of NMT without authorization.

Answer: MCI denies that it switches NMT's customers to MCI's local service without the customers' authorization.

- B. Requiring that MCI cease and desist its practice of switching NMT's customers to MCI's local service with the customers' authorization.

Answer: MCI denies that it switches NMT's customers to MCI's local service without the customers' authorization.

- C. Require MCI to pay NMT the amount NMT would have collected for the telecommunications service in the amount of \$500,000.

Answer: MCI denies that NMT's is entitled to any amount of damages.

- D. Impose any penalties the Commission deems appropriate.

Answer: MCI denies that any penalties can or should be imposed upon MCI.

- E. Grant any other relief herein as will promote the development of competition in the telecommunications service market, or that justice and equity may otherwise require.

Answer: MCI denies that any relief should be granted.

AFFIRMATIVE DEFENSES

First Affirmative Defense

NMT's complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense

NMT has failed to comply with the requirements of Section 13-515.

Third Affirmative Defense

MCI reserves the right to assert additional affirmative defenses that may become applicable.

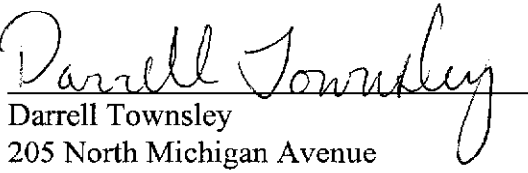
PRAYER FOR RELIEF

WHEREFORE, MCImetro Access Transmission Services, Inc. requests that this Administrative Law Judge and the Commission grant it the following relief:

- (a) That the Judge enter judgment in favor of MCI and against NMT on NMT's complaint;
- (b) That the Judge and the Commission assess the costs of investigation and conduct of this proceeding against NMT pursuant to Section 13-515(g) of the IPUA and Section 766.400 of the Commission's Rules;
- (c) That the Judge and the Commission award MCI such other and further relief as the Judge and the Commission deem just and proper.

Respectfully submitted,

MCImetro Access Transmission Services, Inc.

By: 
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205 North Michigan Avenue
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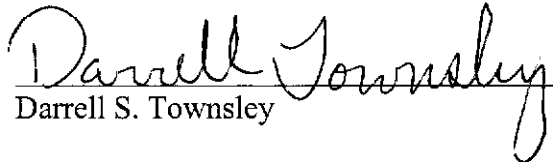
One of its attorneys

Dated: August 24, 2001

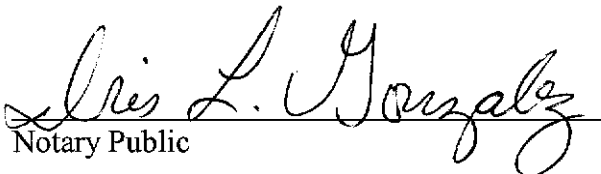
STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

AFFIDAVIT

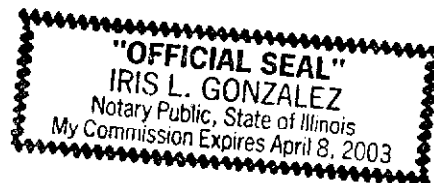
Darrell S. Townsley, being first duly sworn, deposes and states that he is an attorney representing MCImetro Access Transmission Services, Inc., that he has read the Verified Answer and Affirmative Defenses of MCImetro Access Transmission Services, Inc. in Docket No. 01-0560, and knows the contents thereof, and that the statements therein contained are true, to the best of his knowledge, information and belief. Affiant further states that each allegation in the Verified Answer that indicates that MCI lacks sufficient knowledge to form a belief as to the veracity of the allegations contained in the Complaint are true.


Darrell S. Townsley

SUBSCRIBED AND SWORN to
before me this 24th day of August, 2001.


Notary Public

My commission expires on 4-08-03.



Service List
Illinois Commerce Commission
Docket Number 01-0560

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